

OSTER Researching Services

12897 Colonial Dr. • Mt. Airy, Md. 21771
301-253-6040

May 9, 1988

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RECORDATION NO. _____ FILED 1988
MAY 9 1988-9 10 AM
INTERSTATE COMMERCE COMMISSION

No. 8-130A010
Date MAY 9 1988
Fee \$ 13.00
ICC Washington, D. C.

Ms. Mildred Lee
Recordations Unit
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20007

Dear Ms. Lee:

Enclosed is a Locomotive Lease Agreement dated June 25, 1987,
between the following parties:

Lessor: Helm Equipment Leasing Corporation
One Embarcadero Center
San Francisco, CA 94111

Lessee: Burlington Northern Railroad Co.
9401 Indian Creek Parkway
Overland Park, Kansas 66210

The equipment involved in this agreement is as follows:

Equipment: 3, GP38-2 2000 HP Locomotives

Also enclosed is a Renewal Rider dated January 12, 1988, to
be filed as Supplement A to the above Locomotive Lease Agreement.

Please record these documents. Thank you.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosure

Checked by Mary Ann Oster

100-130A010-1
MAY 9 1988
ICC

Interstate Commerce Commission
Washington, D.C. 20423

5/9/88

OFFICE OF THE SECRETARY

Mary Ann Oster
Oster Researching Sercives
12897 Colonial Dr.
Mt Airy ,Md. 21771

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/9/88 at 9:45am , and assigned recordation number(s). ^{15622-A} 15622, 15623, & 15624

Sincerely yours,

Narita L. McEne
Secretary

Enclosure(s)

LOCOMOTIVE LEASE AGREEMENT

MAY 9 1988 - 9 49 AM

INTERSTATE COMMERCE COMMISSION

THIS LEASE made and entered into as of this 25th day of June 1987, by and between Helm Equipment Leasing Corporation, a California corporation, hereinafter called "Lessor", and Burlington Northern Railroad Company, a Delaware corporation, hereinafter called "Lessee".

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Lease: Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the Locomotives described in Schedules A and B attached hereto and made a part thereof, "as is", together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto, hereinafter called "Locomotive(s)", upon the terms and conditions herein set forth. This Lease shall be binding only on Locomotives described in Schedules A and B. All Locomotives presently bear either Missouri Pacific or Union Pacific Railroad reporting marks. The Lessee may stencil its name on the Locomotives, but shall not remove or obscure Lessor's reporting marks.

2. Inspection and Acceptance: Lessee acknowledges that it has inspected the Locomotives in North Platte, Nebraska, and at the time of said inspection found them to be in good repair and operating condition. Lessor shall deliver said Locomotives to Lessee at Sidney, Nebraska. At the time of said delivery of Locomotives to Lessee, Lessee shall inspect each Locomotive and except as otherwise determined by said inspection, each Locomotive shall be considered in good repair and operating condition at the time of delivery. At the time of return of the Locomotives to Lessor at a mutually agreed point on the lines of Lessee, a joint inspection of each Locomotive shall be performed and except as otherwise determined by said joint inspection, each Locomotive shall be considered to be in good repair and operating condition at the time Locomotives are returned to Lessor.

3. Rental: Lessee shall pay to Lessor as rental for each Locomotive _____ for each day or fraction thereof from the time that Locomotives are received by Lessee at Sidney, Nebraska, hereinafter called "Rent Commencement Date", until same is returned to Lessor at the expiration of the Lease Term. Lessor shall render a monthly bill against Lessee for said rental and Lessee shall pay same within thirty (30) days of receipt thereof.

Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except as otherwise provided herein; nor shall this Agreement terminate or the obligations of Lessee be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of any Locomotive or damage to or loss of possession or use or destruction of all or any of such Locomotives from whatever cause and of whatever duration, except as otherwise provided herein. Lessor hereby irrevocably appoints and constitutes Lessee its attorney-in-fact for and in its name and behalf, but for the account of Lessee, to make and enforce, from time to time, at Lessee's expense, whatever claims Lessor may have against manufacturer that arise or are discovered during the term of this lease. Lessee acknowledges that; Lessor is in no way connected to the Locomotive manufacturer; Lessor has no knowledge or information as to the condition or suitability for Lessee's purpose of the Locomotives;

and Lessor's decision to enter into this Lease is made in reliance on Lessee's undertakings herein, including Lessee's express agreement not to assert against Lessor any claims, defenses, set-offs or counterclaims it may not or hereafter have against the Locomotive manufacturer.

4. Term: The term of this Lease shall be until January 15, 1988. At termination of the lease, the locomotives will be delivered by the Lessee to an interchange location on the Lessee's railroad that is mutually agreed upon with Lessor.

5. Warranties and Representations: LESSOR MAKES NO REPRESENTATION OR WARRANTIES, EXCEPT AS PROVIDED IN SECTION 9 AND SECTION 16 BELOW, OF ANY KIND RESPECTING THE LOCOMOTIVES, WHETHER STATUTORY, WRITTEN ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE LOCOMOTIVES, PURSUANT TO THIS AGREEMENT TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN THE LOCOMOTIVES, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY LOCOMOTIVES. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon, except that this shall not limit Lessee's rights against the manufacturer as stated in Section 5. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages.

6. Place of Payment of Rent: Lessee shall direct payment of the monthly rent to the following address:

Helm Financial Corporation
One Embarcadero Center, #3320
San Francisco, CA 94111
Attention: Mr. David R. Eckles

7. Recordkeeping; Inspection: Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, operation, inspection, repairs and maintenance of each Locomotive while in its possession as shall be reasonably required by Lessor. Lessor, by such agent or agents as it may designate, shall have the right at all reasonable times to go upon the property of Lessee to inspect any Locomotive while in the possession of Lessee. Lessor agrees that its agents will sign a disclaimer or release of liability as a precondition to having access to Lessee's property.

8. Loss or Destruction: Lessee agrees it will be solely responsible for any loss, damage or destruction of any Locomotive leased from Lessor while subject to this Lease. In case any of the Locomotives during the term of the Lease period become lost, destroyed or damaged beyond repair from any cause whatsoever, rental with respect to any such Locomotive shall cease immediately, but in such case Lessee agrees to pay Lessor the sum of _____ per Locomotive.

9. Mechanical: Lessee will, at its sole expense, perform all running repair maintenance work, lubrication and inspection on Locomotive units in accordance with manufacturer's recommendation.

Lessor agrees to accept 100 percent responsibility for the (a) traction alternator, (b) engine crankshaft, and (c) four or more power assemblies replaced at one time. Lessee agrees to accept 100 percent responsibility for items (a), (b), and (c) at any time if said failure has been caused by misuse or accident of Lessee.

Notwithstanding the foregoing, however, Lessor shall have the right to terminate the lease of any Locomotive that fails due to any of the above reasons. In the event Lessor terminates the lease of a Locomotive(s) due to mechanical reasons, rental shall cease on the date that Lessee delivers Locomotive to Lessor at Minneapolis, Minnesota

10. Plans and Specifications: Lessor agrees to provide Lessee with current wiring diagram, current wiring running list, current air brake piping diagrams including all modifications before July 10, 1987.

11. Indemnity: Subject to the obligations and undertakings of the Lessor specified in Sections 8 and 16 of this lease, Lessee does hereby release, indemnify and save harmless Lessor, its successors and assigns, from and against any and all liability, loss, cost, damage, charges and expense which Lessor may incur, suffer or be in any way subjected to, resulting from or arising out of injury to or death of any person or persons whomsoever, and the loss or destruction of or damage to any property whatsoever of any persons, firm or corporation, including but not limited to the property of the parties hereto or in the care or custody of the parties hereto and from any and all claims, demands, or actions for such loss, injury or damage, caused by, growing out of or in any way connected with the lease, possession, use, maintenance or operation of said equipment by Lessee whether attributable to the fault, failure or negligence of Lessor or otherwise. The foregoing release and indemnification shall apply to matters or things occurring only between the time all Locomotives are delivered to Lessee and the time they are re-delivered to Lessor (save and except while any Locomotive or Locomotives are within the Lessor's possession).

12. Assignment: Lessee shall not assign or sublet its interest, or any part thereof, under this Lease, or permit the use or operation of any Locomotive subject to this Lease by any other person, firm or corporation, other than wholly-owned subsidiaries, without the prior written consent of Lessor. Lessor expressly consents to incidental operation and use on railroad other than Lessee's under standard run-through and power pooling arrangements. Lessor may at any time assign all or any portion of the rents due or to become due, and/or the leased property without notice to Lessee and in such event Lessor's transferee as assignee shall have all the rights, powers, privileges and remedies of the Lessor hereunder. Lessee shall have no obligation to pay any assignee, and shall continue to pay Lessor, until such time as notice of such assignment is given to Lessee in accordance with Section 13.

13. Notice: Unless otherwise specifically provided, any notices to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid, in the following manner:

(a) Notices from Lessor to Lessee shall be sent to:

Burlington Northern Railroad Company
9401 Indian Creek Parkway
Overland Park, Kansas 66210
Attention: Mr. Ed Bauer

or to such other address as Lessee may from time to time indicate by written notice to Lessor.

- (b) Notices from Lessee to Lessor shall be sent to:

Helm Financial Corporation
One Embarcadero Center, #3320
San Francisco, CA 94111
Attention: Mr. David R. Eckles

Or to such other address as Lessor may from time to time indicate by written notice to Lessee.

14. Compliance with Law; Repair, Maintenance and Liens: Lessee shall comply with FRA and all other applicable governmental laws, regulations and requirements and other binding regulations with respect to use, maintenance and operation of the Locomotives during the lease period.

The Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee shall, subject to Section 9, at its own cost and expense, maintain and keep the Locomotives in good order, condition and repair, ordinary wear and tear excepted. Any parts installed or replacements made by Lessee upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor. Lessee will not permit any liens or encumbrances to be placed in the Locomotives and will promptly take action, at its expense, to remove and discharge any liens that may be placed on the Locomotives.

15. Quiet Enjoyment: So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

16. Authority: The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Lease and bind the respective parties to the terms and provisions hereof. The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Agreement and bind the respective parties to the terms and provisions hereof.

17. Late Charges: Delinquent installments of rent shall bear interest at the rate of 1 1/2 percent per month if not prohibited by law, otherwise at the highest lawful contract rate.

18. Filing and Administration: Lessee will promptly cause this Lease to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303 for the protection of Lessor's title and will furnish Lessor proof thereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotives to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lessee, and in connection with any such action, will deliver to Lessor proof of such filing.

19. Taxes: Lessee, or Lessor at Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, but only as it relates to a sale to Lessee, use and property taxes, gross receipts taxes arising out of receipts from

use or operation of Locomotives including without limitation amounts payable under Section 3 hereof and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of Lessor or Lessee. Nothing herein contained shall be construed as requiring Lessee to pay or discharge any tax on the income derived by Lessor hereunder.

20. Default: If the Lessee, after five (5) business days' notice of default, shall fail to carry out and perform any of the obligations on its part to be performed under this Agreement, or if a petition, in bankruptcy, for reorganization, for a Trustee, or for a Receiver, shall be filed by or against the Lessee, then, and in any of said events, Lessor shall have all rights available to it at law or in equity, including without limitation the right immediately to repossess the Locomotives, to remove the Locomotives from Lessee's service, to terminate this Agreement, and recover any and all damages sustained as a result of Lessee's default. If Lessor shall terminate this Agreement pursuant to this Section, Lessee shall remain liable for all unpaid rent and other amounts due hereunder. The rights and remedies herein given are provided by law or in equity.

Should any proceedings be instituted by Lessor for monies due to Lessor hereunder and/or for possession of any or all of the Locomotives or for any other relief, Lessee shall pay Lessor a reasonable sum as attorney's fees. In addition to any remedies provided herein, Lessor shall have all the rights provided to a Lessor under Section 1168 of Title 11 of the United States Code and any successor provision thereto.

21. Miscellaneous: All transportation charges for delivery of the locomotives to the Lessee shall be borne by Lessor. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations or any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. Lessee admits the receipt of a true copy of this Locomotive Lease Agreement.

22. Laws Governing Lease: The Agreement shall be governed by and construed in accordance with the laws of the State of California.

BURLINGTON NORTHERN RAILROAD
COMPANY, LESSEE

Edward L. Bauer Jr.
By

System Chief Mech. Officer
Title

Approved

Associate General Counsel

Date 6/20/87

HELM EQUIPMENT LEASING CORPORATION,
LESSOR

David R. Edwards
By

Executive Vice President
Title

SCHEDULE A

Locomotive Description: General Motors (Electro Motive Division) GP38-2, 2000 H.P., Diesel Electric Locomotives.

The Missouri Pacific and Union Pacific locomotive numbers are as follows:

<u>LOCOMOTIVE NUMBER</u>	<u>BUILDER</u>	<u>TYPE</u>	<u>HORSEPOWER</u>	<u>DAILY RENTAL RATE</u>	<u>CASUALTY VALUE</u>
** MP 2018	EMD	GP38-2	2000		
** MP 2018 ^{APR}	EMD	GP38-2	2000		
* MP 2035	EMD	GP38-2	2000		
* MP 2039	EMD	GP38-2	2000		
** MP 2040	EMD	GP38-2	2000		
* MP 2042	EMD	GP38-2	2000		
* MP 2045	EMD	GP38-2	2000		
* MP 2052	EMD	GP38-2	2000		
** UP 2369	EMD	GP38-2	2000		

* Delivered on 6/15/87
 ** Delivered on 6/18/87

SCHEDULE B

Locomotive Description: General Motors (Electro Motive Division) GP38-2, 2000 H.P., Diesel Electric Locomotives. presently utilized by Missouri Pacific and Union Pacific.

4 units to be delivered on July 4, 1987, upon inspection and approval by Burlington Northern Railroad Company Mechanical Department.

<u>Locomotive Number</u>	<u>Builder</u>	<u>Type</u>	<u>Horsepower</u>	<u>Daily Rental Rate</u>	<u>Casualty Value</u>
*MP 2021	EMD	GP38-2	2000		
2022	EMD	GP38-2	2000		
2025	EMD	GP38-2	2000		
2037	EMD	GP38-2	2000		

*Anticipated delivery of 7/21/87